

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Chavis Miller,)	
)	
Plaintiff,)	
)	Civil Action No. 6:24-cv-2268-BHH
v.)	
)	<u>ORDER</u>
Susan Duffy, Magon Toth, E. Cowley,)	
Division of Mental Health Services,)	
)	
Defendants.)	
_____)	

This matter is before the Court upon Plaintiff Chavis Miller's ("Plaintiff") *pro se* complaint filed pursuant to 42 U.S.C. § 1983. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2), D.S.C., the matter was referred to a United States Magistrate Judge for preliminary determinations.

On July 3, 2024, the Magistrate Judge issued an order instructing Plaintiff that his complaint was subject to dismissal as drafted and giving him time to file an amended complaint. When Plaintiff failed to file an amended complaint as instructed, the Magistrate Judge issued a Report and Recommendation ("Report"), on July 26, 2024, outlining the issues and recommending that the Court dismiss this action with prejudice in accordance with Rule 41(b) of the Federal Rules of Civil Procedure, without further leave to amend, and without issuance and service of process. *See Link v. Wabash R.R. Co.*, 370 U.S. 626 (1962); *Ballard v. Carlson*, 882 F.2d 93, 95-96 (4th Cir. 1989), *cert. denied sub nom, Ballard v. Volunteers of America*, 493 U.S. 1084 (1990) (holding that district court's dismissal following an explicit and reasonable warning was not an abuse of discretion). Attached to the Magistrate Judge's Report was a notice advising Plaintiff of the right to file written objections to the Report within fourteen days of being served with a copy. To date,

no objections have been filed. Plaintiff did, however, file a motion for extension of time to file an amended complaint and a motion for the appointment of counsel. (ECF Nos. 22, 23.)

The Magistrate Judge makes only a recommendation to the Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a *de novo* determination only of those portions of the Report to which specific objections are made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of specific objections, the Court reviews the matter only for clear error. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’”) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Here, because no objections to the Report have been filed, the Court has reviewed the record, the applicable law, and the findings and recommendations of the Magistrate Judge for clear error. After review, the Court finds no clear error and agrees with the Magistrate Judge’s analysis. Accordingly, the Court finds that this action is subject to summary dismissal based on the pleading deficiencies outlined by the Magistrate Judge. The Court notes, however, that Plaintiff has filed a motion for extension of time to file an amended complaint. Importantly, however, nowhere in his motion does Plaintiff identify how an amended pleading would cure the deficiencies outlined by the Magistrate Judge.

Nor does Plaintiff otherwise address any of the Magistrate Judge's findings in the Report. After review, therefore, the Court denies Plaintiff's motion for an extension of time to file an amended complaint, but in the interest of fairness, the Court dismisses this action *without prejudice* as opposed to with prejudice as recommended by the Magistrate Judge. The Court also denies Plaintiff's motion for the appointment of counsel because the Court finds no exceptional circumstances justify the appointment of counsel at this time.

Based on the foregoing, and in the absence of written objections from Plaintiff, the Court adopts the Magistrate Judge's Report (ECF No. 20) to the extent it is consistent with this action, and the Court dismisses this action **without prejudice**. Additionally, the Court denies Plaintiff's motions for an extension of time to amend the complaint and for the appointment of counsel (ECF Nos. 22, 23).

IT IS SO ORDERED.

/s/Bruce H. Hendricks
United States District Judge

September 18, 2024
Charleston, South Carolina

NOTICE OF RIGHT TO APPEAL

Plaintiff is notified of the right to appeal this order within the time period set forth under Rules 3 and 4 of the Federal Rules of Appellate Procedure.